60401-5

60401-5

82210-7

NO. 60401-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CORYELL ADAMS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RONALD KESSLER

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

HEIDI JACOBSEN-WATTS
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Constitutional Provisions

Statutes

Rules and Regulations

A. ISSUE PRESENTED

During the arrest process, police may search the passenger compartment of a suspect's car immediately after a suspect's arrest. When contacted by police, Adams stood in the open door of his car for several seconds, then slammed and locked the car door, but remained within five feet of his car, yelling at the officer. Adams was arrested less than a minute later and police immediately searched his car. Was the search lawful?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Adams with possession of cocaine. CP 1-4. Adams moved to suppress the evidence pursuant to CrR 3.6, on the ground that he had locked his car door prior to his arrest. CP 13-19. The trial court denied the motion to suppress. CP 21-23. Adams waived his right to a jury trial and the court found Adams guilty on stipulated facts. CP 20, 24-25. Adams received a standard range sentence and filed a timely notice of appeal. CP 35-43.

2. SUBSTANTIVE FACTS

King County Sheriff's Deputy Volpe testified that on the night of May 24, 2006, she was on duty in the city of Shoreline. RP 3-4. As Deputy Volpe drove through the Goldie's Casino parking lot, she saw Adams, sitting sideways in the driver's seat of a car with his leg sticking out of the car. RP 4, 16. Deputy Volpe input the license plate into her patrol car's computer and found that the registered owner had an outstanding misdemeanor warrant. RP 4, 16. Adams matched the description of the registered owner. RP 4. Deputy Volpe circled back through the parking lot when she received the warrant information. Adams drove off quickly and turned on to Aurora Avenue before Deputy Volpe could activate her emergency lights. RP 4.

Adams drove briefly on Aurora, then turned left into the Taco Bell parking lot without signaling and parked in a stall near the front door. RP 4-6. Deputy Volpe pulled in behind Adams with her emergency lights activated and stopped her patrol car at a 45-degree angle behind Adams' car. RP 5, 16-18. Adams immediately jumped out of his car and began yelling at Deputy Volpe, accusing her of stopping him because of his race. RP 6. Adams remained standing in the swing of the open driver's side

door and continued to yell at Deputy Volpe. RP 6. Deputy Volpe repeatedly ordered him back in the car and was concerned for her safety because Adams was so agitated. RP 7. After approximately 30 seconds, Adams slammed his door and took approximately four steps away from his car, into the next parking stall, but continued to yell at Deputy Volpe. RP 7.

When Deputy Wright arrived to provide backup, Deputy Volpe was still trying to get Adams back into his car or to handcuff him for her safety. RP 8. Adams became compliant when Deputy Wright arrived and Adams was immediately arrested. RP 8. Deputy Volpe asked Adams for his identification but he refused; the deputies did not determine his identity until his wallet was removed from his pocket in a search incident to arrest. RP 8-9. Adams continued to argue with the deputies and told them his car was locked and that deputies had no right to go into his car. RP 10. Deputy Wright advised Deputy Volpe that he had unlocked Adams' car immediately after Deputy Volpe arrested Adams. RP 11. As soon as Deputy Volpe had Adams secured in the patrol car, she searched Adams' car, where she found a small black plastic bag containing cocaine in the open center console. RP 11-12.

Deputy Volpe testified that the time between the stop of Adams' car at Taco Bell and his arrest when Deputy Wright arrived was approximately one minute, with Adams standing in the door of his vehicle for 20 to 30 seconds of that time. RP 28-29. Adams was originally arrested for both the warrant and his failure to give information.[1] RP 13. The warrant turned out to be non-extraditable from Pierce County, but Adams was booked for failing to provide information. RP 25-26.

Deputy Volpe called for Adams' car to be impounded because it was unlawfully parked at a business that was open 24 hours a day. RP 13. The car could not remain there because Adams would be booked into jail and would be unable to move it for a few days. RP 13. Deputy Volpe also testified that the warrant was for driving while license suspended in the first degree, and that she always impounds a car when the driver is suspended in the first degree. However, Deputy Volpe acknowledged that she could not recall if Adams was actually suspended at the time, or if the warrant was simply for that crime. RP 14-15, 30. In any event, Deputy Volpe testified she calls for impounds a high percentage of the time when a suspect is arrested out of a car, and if she does impound a

[1] See RCW 46.61.020.

suspect's car, she does an inventory search to make sure any valuable property is accounted for. RP 27-28. Deputy Volpe testified that she would not necessarily have impounded Adams' car if it had not been in a disabled person stall or if it had been parked at a house or apartment building. RP 29.

The trial court denied the motion, ruling that Adams was a recent occupant of the vehicle and that police were authorized to stop the car because of the warrant. RP 69. The court further concluded that a driver cannot defeat a search incident to arrest by getting out of the car, closing the door, and locking it when the driver was seen driving the car and where the arrest was very close in time and space to the driving of the vehicle. RP 69.

C. ARGUMENT

Adams argues that his car could not be searched incident to his arrest because he parked the car, locked the door, and stepped five feet from the car, into the adjacent parking stall. This argument should be rejected for two reasons. First, the search was lawful incident to Adams' arrest because Adams remained near the car

with his keys, yelling at the officer, and the time between the stop and search incident to arrest was very short.

Second, the search was lawful as an impound search; the deputy had the car impounded because Adams was taken into custody and conducted the search before the tow truck arrived. Therefore, the cocaine was also admissible under the inevitable discovery rule.

Review of a trial court's conclusions of law in a suppression hearing is de novo. State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999). Adams does not challenge the court's findings of fact, which are verities on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1993).

1. THE SEARCH WAS VALID AS A SEARCH INCIDENT TO ARREST.

The scope of post-arrest vehicle searches in Washington is analyzed under the bright-line rule articulated in State v. Stroud,

106 Wn.2d 144, 720 P.2d 436 (1986).[2] The Stroud court held that during the arrest process, including the time immediately subsequent to the suspect's being arrested, handcuffed, and placed in a patrol car, officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. But, if the officers encounter a locked *container* or locked *glove compartment*, they may not unlock and search either container without obtaining a warrant. Id. at 152 (emphasis added).

Stroud, New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L .Ed. 2d 768 (1981), and United States v. Thornton, 541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004) authorize post-arrest vehicle searches based on the dangers and exigencies of arresting suspects from cars, including officer safety concerns and evidence destruction. Stroud, 106 Wn.2d at 149-50; Belton, 453 U.S. at 457; Thornton, 541 U.S. at 621-22. Those exigencies are

---

[2] Stroud was decided under Article I, § 7. Stroud, 106 Wn.2d 149. With the exception of excluding locked containers from vehicle searches, the rule in Stroud is identical to the United States Supreme Court's holding in New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981) (held: when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile). Belton expanded the rule in Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969) (authorizing search of the "grab-area" around a person arrested in his home), to arrests involving an automobile. See also United States v. Thornton, 541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004).

based on the arrestee's "recent occupancy" of the car and the arrestee's access to the car at the time of the arrest, based on temporal and spatial proximity to the car. Thornton, 541 U.S. at 622.

An extensive body of Washington caselaw exists regarding the validity of a search based on the arrestee's spatial proximity to his car. See e.g. State v. Porter, 102 Wn. App. 327, 332, 6 P.3d 1245 (2000) (search invalid when defendant was 300 feet away from vehicle); State v. Johnston, 107 Wn. App. 280, 285-86, 28 P.3d 775 (2001), *review denied*, 145 Wn.2d 1021, 41 P.3d 483 (2002) (search invalid when evidence is insufficient to determine arrestee's distance from car); see also State v. Wheless, 103 Wn. App. 749, 14 P.3d 184 (2000); State v. Rathbun, 124 Wn. App. 372, 101 P.3d 119 (2004); but see State v. Fore, 56 Wn. App. 339, 783 P.2d 626 (1989) (search valid when defendant was in phone booth near car that was "sufficiently close" and defendant was an occupant of moving vehicle just prior to arrest). Although those cases generally hold that a search may be invalid if the arrestee was too far from the vehicle to have access, none of these cases answer the question before this Court: whether an officer may search a car incident to arrest when the arrestee locks the car.

Unfortunately, even the three published cases that involve arrests where the suspect locked his vehicle upon exiting the car provide no real guidance. In State v. Perea, 85 Wn. App. 339, 932 P.2d 1258 (1997), police, with emergency lights activated, followed Perea into his driveway because Perea was driving with a suspended license. Perea parked his car, locked it, and walked towards his house, ignoring the officer's commands to return to his vehicle. Division Two held that the search was invalid because Perea was not seized until he was actually arrested because he did not submit by remaining in or near his car or returning to his car when ordered. The court held that because Perea was not seized, he had the right to lock his car, and the officers were not permitted to search the locked car incident to arrest. Perea, 85 Wn. App. at 344.

Perea is not helpful to this court because, as Adams concedes, the continued validity of the analysis in Perea is questionable,[3] because Division Two relied on the combined subjective-objective analysis for seizure under the Fourth

[3] Brief of Appellant at 12.

Amendment, in California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991), which our state Supreme Court explicitly rejected in State v. Young, 135 Wn.2d 498, 512, 957 P.2d 681 (1998) one year after the Perea decision. To the extent Perea remains good law based on Perea's distance from his vehicle, the decision does not address the impact of the locked door on the search incident to arrest.[4]

State v. O'Neill, 110 Wn. App. 604, 43 P.3d 522 (2002) supports the State's position that a vehicle search is not invalidated by the arrestee locking the door when the arrest occurs near the car, but the case provides no helpful analysis on the precise issue presented here.

Police stopped O'Neill for failing to signal and arrested him for driving with a suspended license. O'Neill complied when ordered out of his car; he was immediately arrested, but he locked his car door as he exited. Id. at 610-11. The locked door is not the central issue in O'Neill, so the court does not specifically address it. Although the court noted that the trial court had found Perea

[4] Adams relies on Perea, as he did below. Adams was unquestionably seized under Young, 135 Wn.2d at 510. If Perea is limited to the validity of the search based on the arrestee's proximity to his car, the case is factually distinguishable from the case at bench and does not support Adams' argument.

"factually distinguishable and legally inapplicable," the court simply held that the search of O'Neill's car was not invalidated by him locking his car door. Id. at 611. The court noted that O'Neill had submitted to the officer's authority, distinguishing that fact from Perea, but that calls into question whether the court applied the invalid seizure analysis in Perea. It seems likely that the court in O'Neill assumed that vehicle searches are valid when the defendant remains near his vehicle from the time of arrest until the search, and when that time is short, regardless of whether the arrestee locks his car. Under such reasoning, O'Neill supports the search of Adams' car.

Most recently, Division Three addressed the issue of whether the act of leaving the vehicle and locking it precludes the search incident to arrest authorized by Stroud. State v. Quinlivan, ___ Wn. App. ___, 176 P.3d 605 (Feb. 5, 2008). In Quinlivan, a sheriff's deputy stopped the defendant for a seatbelt violation and for driving with a suspended license. Quinlivan asked if his truck would be towed, and the deputy answered "yes." Id. at 606. Quinlivan got out of his truck, locked it, put the keys in his pocket, and walked towards the deputy, who had gone back to his motorcycle. Id. When the deputy told Quinlivan to get back in his

vehicle, Quinlivan sat down on the curb. At that time, Quinlivan was at least six to twelve feet, but possibly as much as 50 feet, away from his truck. Id. at 607. The deputy walked over to Quinlivan, told him he was under arrest, and asked for the keys to the truck. Quinlivan told the deputy he did not want the truck searched and that the deputy would need a search warrant. Id. After some discussion, the deputy arrested Quinlivan, took his keys, and searched the truck, finding methamphetamine. Id. at 606, 608.

Division Three held that the search of the truck was unlawful for three reasons: Quinlivan was seized when he was stopped and told that his truck would be towed; he was not arrested until he had lawfully left and locked his truck; and he walked "some distance" away from the truck before he was arrested. Therefore, Quinlivan did not have access to the passenger compartment of his car. Quinlivan, 176 P.3d at 608, 610.

Unfortunately, despite framing the question as whether "leaving and locking" the vehicle precludes the search incident to arrest, the court did not actually address the issue of the locked door. Instead, the court conflated the questionable analysis from Perea, with the distance rationale in Rathbun and Porter.

Thus, neither Perea, O'Neill, nor Quinlivan provide guidance as to whether locking a car door prevents the search of a vehicle incident to arrest. Nor is federal or out of state authority dispositive, as it relies on Fourth Amendment analysis, which generally allows for the search of locked containers and trunks. See Belton; California v. Acevedo, 500 U.S. 565, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991).

State v. Gant, 216 Ariz. 1, 162 P.3d 640, *cert. granted by* Arizona v. Gant, ___ S. Ct. ___ (U.S. Ariz. Feb 25, 2008), may turn out to bear on the analysis presented here. In Gant, the Arizona Supreme Court held that when an arrestee is secured and is not a threat to officer safety or the preservation of evidence, the officer may not search the arrestee's vehicle incident to arrest. Gant, 162 P.3d at 646. Police were at a house when Gant arrived; Gant parked in the driveway and walked twelve feet from his car to the officer, who immediately arrested him. Police searched Gant's car after Gant and two other suspects were placed in patrol vehicles under the supervision of another patrol officer, minutes after the arrest. The United States Supreme Court recently granted certiorari on the question of whether the Fourth Amendment requires law enforcement officers to demonstrate a threat to their

safety or need to preserve evidence related to a crime of arrest to justify a warrantless vehicle search incident to arrest when the vehicle occupants have been arrested and secured. Argument will likely be set in the autumn term.

Gant offers the Court an opportunity to narrow the search incident to arrest exception to situations where articulable exigencies exist. Such narrowing could be contrary to the purpose of the Belton rule, which is to provide a bright-line rule to prevent officers from having to weigh exigencies in arrests on a case-by-case basis. Thornton, 541 U.S. at 623. Moreover, a narrowing of the Belton rule would conflict with Stroud; our state's Supreme Court has never held that police must articulate actual danger to justify a search incident to arrest. Even if the Belton rule was narrowed to require officers to articulate exigencies at the time of the arrest, exigencies did exist at Adams' arrest. Adams was agitated, repeatedly yelling at the officer, causing her to fear for her safety; and he refused to comply with commands to get back in his car. RP 7. Also, Adams locked his car, raising the inference that he had something to hide.

In any event, analyzing the case at bench under existing law, the search of Adams' car was valid, the locked car door

notwithstanding. Adams' proximity to his car and the short time between his arrest and the search of his car validate the search under Stroud and the state and federal cases cited above, discussing spatial and temporal proximity. While Stroud prohibits the search of locked containers in a vehicle, it does not say that police may not search a locked car and there are several reasons to distinguish a locked car from a locked container.

The privacy interest in locked containers depends on two assumptions. First, by locking a container, the individual has shown that he or she reasonably expects the contents to remain private. Second, the danger that the individual either could destroy or hide evidence located within the container or grab a weapon is minimized; the individual would have to spend time unlocking the container, during which time the officers have an opportunity to prevent the individual's access to the contents of the container. Stroud, 106 Wn.2d at 152. However, these considerations are logically lessened when the car, rather than a container inside the car is locked and the arrestee retains the keys and stands directly in front of the car door. This is especially true with the advent of remote and keyless car locks, and such technology increases the risk in requiring officers to speculate about an arrestee's access to

his car or its contents. As the Thornton court held, "The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which Belton enunciated." Thornton, 541 U.S. at 623.

Stroud, Thornton and Belton, are clearly intended to give police officers rules that allow them to control a scene, maintain officer safety, and prevent evidence destruction. Further, the bright-line rule was intended to avoid police officers having to balance these exigencies and privacy interests on a case-by-case basis, while dealing with the stress of an arrest. Stroud, 106 Wn.2d at 152. In cases like the one at bench, the same compelling reasons that allow a search of an unlocked car under Stroud justify the search of a locked car.

In Thornton, 541 U.S. 615, the Court recognized that an arrest is stressful regardless of whether the arrestee is in or out of his vehicle, and that exigent circumstances exist as long as the arrestee is still in control of the vehicle. Id. at 621. When an arrestee retains his keys and remains close to his car, he remains in control of his car and the stress of the arrest is no different than

when the car remains unlocked. Allowing an arrestee to control the scene and remain in exclusive control of the car in which he was a recent occupant negates the protections afforded to officers by Stroud, Belton, and Thornton.

For these reasons, the fact that Adams locked his door does not render the search invalid under the facts of this case. Adams remained near his car, maintaining control over it and access to it. The facts here show that Adams' access to his car was not impeded when he locked it. Adams was agitated and hostile toward the lone officer who made the stop, causing her to fear for her safety. Adams remained near his car at all times before he was arrested, placing himself between his car and the officer; and he retained the keys to his car until after he was arrested. Given these facts, Adams' car remained accessible to him until he was physically in custody, and his behavior created exigent circumstances justifying the search.

The fact that Adams locked his door should not alter the analysis under Stroud. This Court should rely on Stroud's bright-line rule to affirm the trial court.

2. THE EVIDENCE WAS ADMISSIBLE UNDER THE INEVITABLE DISCOVERY RULE BECAUSE THE SEARCH WAS VALID AS AN IMPOUND SEARCH.

The search of Adams' car was also valid as an inventory or impound search. Unlike in Quinlivan, where the court noted that the State relied on no other exception to the warrant requirement,[5] here, the State argued below that the search was valid as an impound or inventory search because Deputy Volpe testified that the car was going to be impounded. RP 13, 28, 48.

Evidence obtained through illegal means is admissible under the inevitable discovery rule if the State can prove by a preponderance of the evidence that the police did not act unreasonably or in an attempt to accelerate discovery, and if the evidence would have been inevitably discovered under proper and predictable investigatory procedures. State v. Richman, 85 Wn. App. 568, 577, 933 P.2d 1088 (1997); Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984).

Law enforcement is authorized to impound a vehicle in several situations, including when the driver is taken into custody. RCW 46.55.113(2)(d). See also State v. Bales, 15 Wn. App. 834,

[5] Quinlivan, 176 P.3d at 610.

835-36, 552 P.2d 688 (1976) (vehicles may be impounded where authorized by specific statute or where other good reason exists); State v. Houser, 95 Wn.2d 143, 622 P.2d 1218 (1980) (impound permissible when vehicle threatens public safety or convenience).

The admissibility of evidence discovered during an inventory search accompanying the impoundment of a vehicle is well recognized.

> When ... the facts indicate a lawful arrest, followed by an inventory of the contents of the automobile preparatory to or following the impoundment of the car, and there is found to be reasonable and proper justification for such impoundment, and where the search is not made as a general exploratory search for the purpose of finding evidence of crime but is made for the justifiable purpose of finding, listing, and securing from loss, during the arrested person's detention, property belonging to him, then we have no hesitancy in declaring such inventory reasonable and lawful, and evidence of crime found will not be suppressed.

State v. Houser, 95 Wn.2d 143, 622 P.2d 1218 (1980), citing State v. Montague, 73 Wn.2d 381, 385, 438 P.2d 571 (1968).

Although there is little published Washington authority regarding inevitable discovery in impound searches, several out of state cases hold that evidence that would be inadmissible as the fruit of an invalid post-arrest search is admissible under the inevitable discovery doctrine when found during an impound

search. Compare State v. O'Neill, 148 Wn.2d 564, 591-92, 62 P.3d 489 (2003) (inevitable discovery doctrine unavailable when invalid search occurred *before* arrest) with State v. Rojers, 216 Ariz. 555, 169 P.3d 651 (2007) and Camacho v. State, 119 Nev. 395, 75 P.3d 370 (2003) (drugs found during invalid post-arrest search of vehicle admissible under inevitable discovery rule because drugs would have been found during impound search).

Deputy Volpe testified that she or Deputy Wright called to have Adams' car impounded while Volpe searched the car, and that the bag of narcotics was immediately seen in the center console of the car. RP 11, 27. The impound was lawful under RCW 46.55.113(2)(d) because Adams was taken into custody. Further, Adams' car was parked in the parking lot of an open business, and would have remained there for an indefinite period while Adams remained in jail. Unlike Perea and Gant, who were parked at private residences, Adams' car would have been left impeding a public convenience while he was in jail.

The court below concluded that the search of Adams' vehicle was lawful under the arrest exception to the warrant requirement and did not decide whether the search was also valid under the impound exception. This court may affirm a trial court's admission

of evidence on any proper basis, even a basis not relied upon by the trial court. State v. Butler, 53 Wn. App. 214, 217, 766 P.2d 505 (1989); see also Nast v. Michels, 107 Wn.2d 300, 308, 730 P.2d 54 (1986) (appellate court may sustain a trial court on any correct ground, even if the ground was not considered by the trial court).

The record is sufficient for this Court to find that the impound was lawful and to affirm the decision below because the evidence was admissible under the inevitable discovery rule as fruit of a valid impound search.

D. CONCLUSION

The search of Adams' car was lawful. The search was temporally and spatially proximate to his arrest and Adams' behavior created exigent circumstances justifying the search. After Adams was seized, he remained within four to five feet of his car, while agitated and yelling at the deputy. The time from the initial seizure to arrest and search was very brief.

The search of Adams' car was also valid as an impound search, because police are authorized by statute to impound vehicles when the driver is taken into custody.

Based on the foregoing, the State respectfully asks this Court to affirm the trial court.

DATED this 4th day of April, 2008.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
HEIDI JACOBSEN-WATTS, WSBA #35549
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana Lind, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. CORYELL ADAMS, Cause No. 60401-5-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame
Name Wynne Brame

4/4/08
Date

Done in Seattle, Washington